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RESTRICTIVE COVENANTS AFTER THE DISSEISIN OF THE COVENANTOR. — When a disseisor enters on land bound by a negative restrictive covenant, may the covenantee force him to observe the restriction? Since the covenant is enforceable against assignees of the covenantor only in equity, and does not attach inseparably to the land like a legal easement or rent charge, and since there is no privity between the covenantor and disseisor, it has been argued that the disseisor cannot be held to his disseisee's obligation. This theory would leave the covenantee without remedy if the disseisor should do the acts forbidden by the covenant; for the courts would hardly adopt the expedient of allowing the covenantee to compel re-entry, by an unwilling disseisee, who has never legally bound himself to do any such thing. There seems to be no adequate reason why the disseisor should not, on the simple ground of justice to the covenantee, be enjoined to respect the covenant, — he cannot complain if an estate coming to him as the gratuity of another's negligence is restricted in its use. Such a course would be no anomaly. Though a covenantor has agreed for himself alone, yet on the ground of necessity in working out justice to the covenantees where unjust enrichment would otherwise result, a donee or purchaser with notice from the covenantor is held to take subject to the covenant.<sup>1</sup>

The same principle appears in the analogous case of a trust, where it is the privilege of the *cestui* to protect the trust estate if the trustee is incapacitated.<sup>2</sup> There are many examples of this. The *cestui* of a mortgage held in trust is allowed to bring a bill to foreclose when the trustee is out of the country,<sup>3</sup> a result which the court bases on the ground of "substantial necessity." So also, where a sheriff wrongfully disseised the trustee of certain lands, and the trustee resigned, the *cestui* has been allowed to bring a bill to restrain an execution sale of the land.<sup>4</sup>

That the right of the injured party to sue may exist though the person who should have protected him has no action, is shown by the case of the donee or purchaser with notice from a covenantor, where the covenantor himself has no right of action. As the statute cannot run against an unbroken negative covenant, it would seem, further, that, as a recent English case holds, the disseisor's obligation to respect the covenantee's right should not terminate when the disseisee's rights are barred by the statute. *Re Nesbitt and Potts' Contract*, 53 W. R. 297 (Ch. D.).

SUSPENSION OF EASEMENTS BECAUSE OF MISUSER. — The law affords immediate redress for an excessive user of an easement, because such user may be at once an injury to the servient tenement and the basis of a new prescriptive right. The owner of the servient tenement may protect himself, in the case of affirmative easements, by bringing trespass for the excess,<sup>1</sup> by physically obstructing the encroachment,<sup>2</sup> or, where the legal

<sup>1</sup> Cf. *De Mattos v. Gibson*, 4 De G. & J. 276.

<sup>2</sup> *Beach, Trusts & Trustees* § 698.

<sup>3</sup> *Ettlinger v. Persian, etc., Co.*, 142 N. Y. 189.

<sup>4</sup> *Zimmerman v. Makepeace*, 152 Ind. 199.

<sup>1</sup> *Davenport v. Lamson*, 21 Pick. (Mass.) 72.

<sup>2</sup> *French v. Marstin*, 32 N. H. 316.